

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86143076
LAW OFFICE ASSIGNED	LAW OFFICE 118
MARK SECTION (no change)	
ARGUMENT(S)	
<p>The Examiner has maintained the rejection of the applied for mark ASPIRE for use with pillows filed by Bedgear ("Applicant") is allegedly confusingly similar with the following registration: Registration No. 2,783,646 for ASPIRE for use with furniture owned by Kimball International ("Registrant"). As previously stated, Registrant uses the ASPIRE mark only on office modular furniture. (see Appendix A). There is no indication on Kimballs' website or on the internet that Registrant has used or has any intention to use the ASPIRE mark with anything other than office modular furniture. Furthermore, if Registrant had intended to use such mark on other goods, Registrant would have included these goods in their initial application and/or filed for use of these goods at a later date. To support this allegation, Applicant directs the Examiner to the registrations cited by the Examiner in that those registrants did in fact have an intent to use the mark with both furniture and bedding and included all types of goods in the initial listing of goods. Registrant of the ASPIRE mark did not do this. Furthermore, it appears extremely unlikely that Registrant would offer any type of bedding or pillows under the ASPIRE mark as they have been continuously using their mark for over 14 years on just office modular furniture. In addition, Registrant offers their office furniture only at certain dealerships. (see Appendix B). These dealerships focus on office furniture not bedding. Moreover, these are office furniture stores and not residential. Applicant submits that the goods in question are completely unrelated, pillows compared to office furniture. In addition, Applicant offers their pillows in specialty home goods stores, such as, for example, Sleepy's (see Appendix C). The stores that sell Applicant's products are predominantly bedding stores or home goods stores. As such, a purchaser of pillows would not be looking in the same area of advertising and distribution channels as that for office modular furniture. Many courts weigh this evidence separately to determine if consumers or distributors may be exposed to potential confusion, here there would be none since they would not cross the same places in commerce. Especially when the goods are considered in the context of how the parties' marks are actually used in the marketplace, it can be determined that the goods are indeed not sufficiently related to create a likelihood of confusion. Applicant therefore requests that the Examiner withdraw the rejection.</p>	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_47236186-20150310140013442959_._Attachments2.pdf
CONVERTED PDF	

FILE(S) (9 pages)	\\TICRS\EXPORT16\IMAGEOUT16\861\430\86143076\xml8\RFR0002.JPG
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SIGNATURE SECTION	
RESPONSE SIGNATURE	/Leo G. Lenna/
SIGNATORY'S NAME	Leo G. Lenna
SIGNATORY'S POSITION	Attorney of Record, NYS Bar Member
SIGNATORY'S PHONE NUMBER	631-656-9818
DATE SIGNED	03/10/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Mar 10 14:06:08 EDT 2015
TEAS STAMP	USPTO/RFR-47.23.6.186-201 50310140608713588-8614307 6-53088325c1f2a4299a20a11 e47162032c2d262edffd91a8e 4135ae23204687a5-N/A-N/A- 20150310140013442959

To the Commissioner for Trademarks:

Application serial no. **86143076** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

The Examiner has maintained the rejection of the applied for mark ASPIRE for use with pillows filed by Bedgear ("Applicant") is allegedly confusingly similar with the following registration: Registration No. 2,783,646 for ASPIRE for use with furniture owned by Kimball International ("Registrant"). As previously stated, Registrant uses the ASPIRE mark only on office modular furniture. (see Appendix A). There is no indication on Kimballs' website or on the internet that Registrant has used or has any intention to use the ASPIRE mark with anything other than office modular furniture. Furthermore, if Registrant had intended to use such mark on other goods, Registrant would have included these goods in their initial application and/or filed for use of these goods at a later date. To support this allegation, Applicant directs the Examiner to the registrations cited by the Examiner in that those registrants did in fact have an intent to use the mark with both furniture and bedding and included all types of goods in the initial listing of goods. Registrant of the ASPIRE mark did not do this. Furthermore, it appears extremely unlikely that Registrant would offer any type of bedding or pillows under the ASPIRE mark as they have been continuously using their mark for over 14 years on just office modular furniture. In addition, Registrant offers their office furniture only at certain dealerships. (see Appendix B). These dealerships focus on office furniture not bedding. Moreover, these are office furniture stores and not residential. Applicant submits that the goods in question are completely unrelated, pillows compared to office furniture. In addition, Applicant offers their pillows in specialty home goods stores, such as, for example, Sleepy's (see Appendix C). The stores that sell Applicant's products are predominantly bedding stores or home goods stores. As such, a purchaser of pillows would not be looking in the same area of advertising and distribution channels as that for office modular furniture. Many courts weigh this evidence separately to determine if consumers or distributors may be exposed to potential confusion, here there would be none since they would not cross the same places in commerce. Especially when the goods are considered in the context of how the parties' marks are actually used in the marketplace, it can be determined that the goods are indeed not sufficiently related to create a likelihood of confusion. Applicant therefore requests that the Examiner withdraw the rejection.

EVIDENCE

Original PDF file:

[evi_47236186-20150310140013442959_ . Attachments2.pdf](#)

Converted PDF file(s) (9 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Leo G. Lenna/ Date: 03/10/2015

Signatory's Name: Leo G. Lenna

Signatory's Position: Attorney of Record, NYS Bar Member

Signatory's Phone Number: 631-656-9818

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86143076

Internet Transmission Date: Tue Mar 10 14:06:08 EDT 2015

TEAS Stamp: USPTO/RFR-47.23.6.186-201503101406087135

88-86143076-53088325c1f2a4299a20a11e4716

2032c2d262edffd91a8e4135ae23204687a5-N/A

-N/A-20150310140013442959

APPENDIX A

Kimball®Office

[PRODUCTS](#)[INDUSTRIES](#)[DESIGN](#)[COMPANY](#)[LOGIN](#)[CUSTOMER SERVICE \(Offline\)](#)

Aspire®

[Overview](#) [Photos](#) [Typicals](#) [Options](#)

Combine large group interaction with small table mobility. Aspire is simple to fold and easy to move through any standard doorway or elevator.

With ease and versatility:

- Adapt quickly to your office's changing needs
- Move easily into position or storage
- Available in folding and non-folding styles

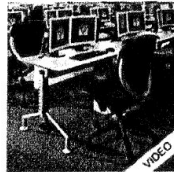
Related Case Studies



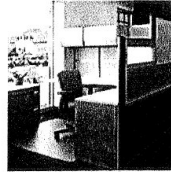
OtterBox



City of Beverly Hills



Florida International University



Champaign Bank

[SEE MORE RELATED CASE STUDIES](#)

Collateral

[Overview Sheet - Aspire](#)[Aspire Tables - Price List Effective 6/23/2014](#)

Service

[Care & Maintenance](#)[Product Documents](#)[Specification & CAD Info](#)

Sustainability



Tools

[Add to Brochure](#)[Send to a Friend](#)[Print Page](#)

APPENDIX B

Kimball Office US Select Dealer Listing

Filter by State:

38 Select Dealers

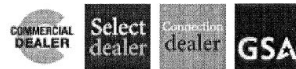
STRATEGIC WORKSPACES40 BROAD ST 2ND FL
BOSTON, MA - 02109-4340

Phone: 617-426-0777

Fax: 617-426-0021

E-mail: info@strategicworkspaces.com

Dealership Attributes: [?]



Small Business Indicator:

Small Business Concern

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)OFFICE FURNITURE PARTNERSHIP INC67 E PARK PL
MORRISTOWN, NJ - 07960-7105

Phone: 973-267-6966

Fax: 973-267-5590

E-mail: info@officefurniturepartnership.com

Dealership Attributes: [?]



Small Business Indicator:

Women-Owned Small Business

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)ADVANCED OFFICE ENVIRONMENTS160 QUAKER LN
MALVERN, PA - 19355-2479

Phone: 610-993-3450

Fax: 610-993-3460

E-mail: bfinnicum@advancedofficeenv.com

Dealership Attributes: [?]

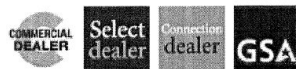


Small Business Indicator:

8(a) Contract Award
HUBZone Small Business
Minority Owned Business
Small Disadvantaged Business[Get Directions to this Dealership, Enlarge Map, or Print Map](#)TACTICAL OFFICE SOLUTIONSHARBOUR CENTRE
2 EATON ST, STE 805
HAMPTON, VA - 23669-4054

Phone: 757-565-6060

Dealership Attributes: [?]



3/10/2015

Dealer Locator - Kimball Office

Fax: 757-565-6088
E-mail: pablo@tosoffice.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

FURNITURESPEAK INC
10919 PAYNES CHURCH DR
FAIRFAX, VA - 22032-2922

Dealership Attributes: [?]



Small Business Indicator:
Women-Owned Small Business

Phone: 703-459-9500
Fax: 703-563-6283
E-mail: horna.lidie@furniturespeak.net

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

CREATIVE BUSINESS INTERIORS INC
8720 FLEET SERVICE DR
RALEIGH, NC - 27617-4800

Dealership Attributes: [?]



Small Business Indicator:
Small Business Concern

Phone: 919-786-4800
Fax: 919-783-8585
E-mail: dcramey@creativebusinessnc.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

M HANSON & COMPANY INC
33 SE 5TH ST
BOCA RATON, FL - 33432-6030

Dealership Attributes: [?]



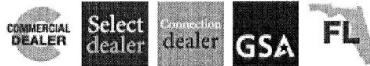
Small Business Indicator:
Small Business Concern
FL SPURS #: F-650431135-001

Phone: 561-338-6425
Fax: 561-338-6480
E-mail: info@mhansonco.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

M HANSON & COMPANY INC
1626A N FEDERAL HWY
FORT LAUDERDALE, FL - 33305-2529

Dealership Attributes: [?]



Small Business Indicator:
Small Business Concern
FL SPURS #: F-650431135-001

Phone: 954-630-1500
Fax: 954-630-1555
E-mail: info@mhansonco.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

OFFICEPLAN
500 GLASS RD
PITTSBURGH, PA - 15205-9407

Dealership Attributes: [?]



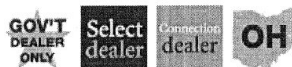
Small Business Indicator:
Women-Owned Small Business

Phone: 412-489-1360

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

BULLDOG OFFICE PRODUCTS INC
DBA OFFICEPLAN
500 GLASS RD
PITTSBURGH, PA - 15205-9407

Dealership Attributes: [?]

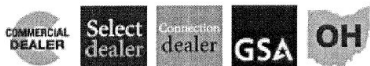


Phone: 412-489-1360
Fax: 412-489-6795
E-mail: furniture@bulldogop.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

WORKSCAPE
1970 N CLEVELAND MASSILLON RD #723
BATH, OH - 44210-5336

Dealership Attributes: [?]



Small Business Indicator:
Women-Owned Small Business

3/10/2015

Dealer Locator - Kimball Office

Phone: 330-536-9050
E-mail: info@goworkscape.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

COMMERCIAL ENVIRONMENTS INC
505 CARDEN JENNINGS LN, STE 500
KNOXVILLE, TN - 37932-3261

Dealership Attributes: [?]



Small Business Indicator:
Women-Owned Small Business

Phone: 865-671-9700
Fax: 865-671-9704
E-mail: jenniferridner@comenviro.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

OSTERMAN CRON INC
10830 MILLINGTON CT
CINCINNATI, OH - 45242-4017

Dealership Attributes: [?]

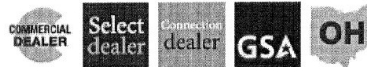


Phone: 513-771-3377
Fax: 513-771-3380
E-mail: 5137713380@EskeronDemand.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

INNOVATIVE OFFICE SOLUTIONS INC
8016 INDUSTRIAL DR
MARIA STEIN, OH - 45860-9546

Dealership Attributes: [?]



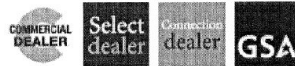
Small Business Indicator:
Small Business Concern

Phone: 419-925-5433
Fax: 419-925-0311
E-mail: eevink@ios-inc.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

OFFICE COORDINATORS INC
326 E MAIN ST
CHATTANOOGA, TN - 37408-1318

Dealership Attributes: [?]



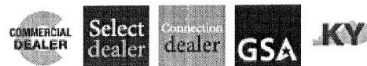
Small Business Indicator:
Women-Owned Small Business

Phone: 423-756-4531
Fax: 423-756-4761
E-mail: info@officecoordinators.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

MUNSON BUSINESS INTERIORS
2307 RIVER RD
LOUISVILLE, KY - 40206-5001

Dealership Attributes: [?]



Small Business Indicator:
Women-Owned Small Business

Phone: 502-589-1236
Fax: 502-589-1317
E-mail: mindy@mbifurniture.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

D2P LLC
7998 CENTERPOINT DR, STE 600
INDIANAPOLIS, IN - 46256-3373

Dealership Attributes: [?]



Small Business Indicator:
Minority Owned Business
Small Business Concern
Women-Owned Small Business

Phone: 317-572-9103
Fax: 317-572-1213
E-mail: rebeccads@d2pindy.com

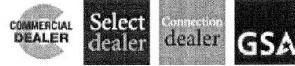
[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

3/10/2015

Dealer Locator - Kimball Office

HST INTERIOR ELEMENTS
680 RUNDLE AVE
NASHVILLE, TN - 37210-2872

Dealership Attributes: [?]



Small Business Indicator:
Small Business Concern

Phone: 615-321-9590
Fax: 615-321-2124
E-mail: hstinfo@intelements.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

BUSINESS ENVIRONMENTS
5611 E MORGAN AVE
EVANSVILLE, IN - 47715-2317

Dealership Attributes: [?]



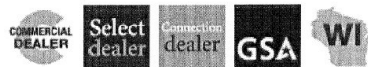
Small Business Indicator:
Small Business Concern

Phone: 812-474-4260
Fax: 812-474-4259
E-mail: busenvir@evansville.net

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

CORPORATE DESIGN INTERIORS LLC
191 N BROADWAY
MILWAUKEE, WI - 53202-6030

Dealership Attributes: [?]



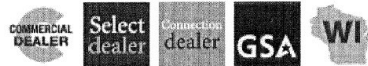
Small Business Indicator:
HUBZone Small Business

Phone: 414-226-6005
Fax: 262-521-1276
E-mail: info@corporatedesigninteriors.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

CORPORATE DESIGN INTERIORS LLC
1522 PEARL ST
WAUKESHA, WI - 53186-5612

Dealership Attributes: [?]



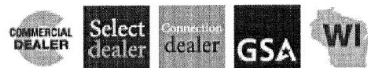
Small Business Indicator:
HUBZone Small Business

Phone: 262-521-1010
Fax: 262-521-1276
E-mail: jhiltz@corporatedesigninteriors.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

LERDAHL BUSINESS INTERIORS
7182 US HIGHWAY 14
MIDDLETON, WI - 53562-4259

Dealership Attributes: [?]



Small Business Indicator:
Small Business Concern

Phone: 608-831-1010
Fax: 608-831-1830
E-mail: lerdahl@lerdahl.com

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WORKING SPACES
11624 PAGE SERVICE DR
SAINT LOUIS, MO - 63146-3533

Dealership Attributes: [?]



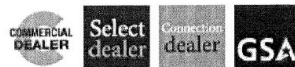
Small Business Indicator:
Small Business Concern

Phone: 314-918-8778
Fax: 314-918-8780
E-mail: napel@wspaces.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)

M HANSON & COMPANY INC
312 3RD ST SE
CEDAR RAPIDS, IA - 52401-1804

Dealership Attributes: [?]



Small Business Indicator:
Small Business Concern

Phone: 319-365-6000
Fax: 319-365-6002
E-mail: kasie@mhansonco.com

[Get Directions to this Dealership, Enlarge Map, or Print Map](#)


<http://www.kimballoffice.com/contactus/select-dealers.aspx>





APPENDIX C

([HTTP://WWW.BEDGEAR.COM/](http://www.bedgear.com/))

HOME	SHOP	TECHNOLOGY	COMMUNITY	
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([HTTP://WWW.BEDGEAR.COM/HOME](http://www.bedgear.com/home))



 Sleepy's Maiden Lane	12.1 km
 Sleepy's Canal St	12.1 km
 Sleepy's Lexington/32nd	12.4 km
 Sleepy's Church Street	12.4 km
 Sleepy's Union Sq	12.4 km
 Sleepy's First Avenue	12.5 km
 Sleepy's Lawrence	12.5 km
 Sleepy's Bensonhurst	12.6 km

<http://www.youtube.com/user/bedgear>

<http://www.pinterest.com/bedgear/>

<http://instagram.com/bedgear>

BEDDING

OUR STORY